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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,439	09/30/2003	Joseph A. Albora	FDN-2638	4118

7590 05/16/2005

GAF MATERIALS CORPORATION

Attn: William J. Davis, Esq.

Legal Department, Building No. 10

1361 Alps Road

Wayne, NJ 07470

EXAMINER

SLACK, NAKO N

ART UNIT	PAPER NUMBER
3635	

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/674,439

Applicant(s)

ALBORA, JOSEPH A.

Examiner

Naoko Slack

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7-16 and 18-24 is/are rejected.
- 7) ☒ Claim(s) 4, 6 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claims 11-20, 22, 23 objected to because of the following informalities: Claims 11-20, 22, and 23 depend from claim 9; however, it appears this dependency may be in error and that these claims were intended to depend from independent claim 10. For purposes of examination, claims 11-20, 22, and 23 are assumed to depend from claim 10. In response to this office action, clarification is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5,7-9 are rejected under 35 U.S.C. 102(b) as being US Patent

4,578,915 by Schneller.

Claim 1:

Schneller discloses a building product comprising:

a composite board having a cellular, non-elastic core (column 1, lines 56-57), top and bottom board surfaces, and a facer comprising a non-cellulosic fiber mat substrate (fiberglass mesh, column 1, line 60); and a water-based overlaying material (34, column 2, lines 45-50) applied to the composite board.

Claims 2 and 3:

Schneller discloses a building product wherein the top and bottom board surfaces are fixed to the facer (column 1, lines 56-60).

Claim 5:

Schneller discloses a building product wherein the non-cellulosic fiber mat is a glass mat (column 1, lines 60-64).

Claim 7:

Schneller discloses a building product wherein the water-based overlaying material is a cementitious material (column 2, lines 10-14).

Claim 8:

Schneller discloses a building product wherein the water-based overlaying material is Portland cement (column 2, line 14).

Claim 9:

Schneller discloses a building product wherein the water-based overlaying material is a finishing plaster (stucco, column 1, line 13).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-16, 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over 4,578,915 to Schneller.

Claims 10-15:

Schneller discloses a building product comprising stud framing, a composite board having a cellular, non-elastic core (22) and top and bottom board surfaces and facer comprising a non-cellulosic fiber mat (26) substrate; a reinforcing layer (28) fixed to the board; and a water-based overlaying material (34) applied to the reinforcing layer.

While Schneller does not specify the use of undersiding such as plywood, such construction is well known and commonly used in the building industry, as illustrated in Applicant's Figure 1, element 2, of prior art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Schneller's composite boards atop an undersiding, as the extra layer of undersiding improves the strength of the wall. Similarly, an undersiding of drywall, concrete block, pre-cast concrete, and

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insulation boards are well known in the building industry and commonly used in the construction of walls. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Schneller's composite boards atop these well-known wall structures, as Schneller is concerned with finishing the exterior surface of a wall such that it is highly weather-resistant (column 1, line 30).

Claim 16:

Schneller discloses that the non-cellulosic fiber mat is a glass mat (column 1, lines 60-64).

Claims 18 and 19:

Schneller discloses that the reinforcing layer is a fiberglass mesh (column 2, lines 1-4). While Schneller does not specify that the reinforcing layer is a self-furring lath, self-furring laths are well known in the art, and it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a lath to reinforce and strengthen the composite board.

Claim 20:

Schneller discloses a building product wherein the water-based overlaying material is a cementitious material (column 2, lines 10-14).

Claim 21:

Schneller discloses a building product wherein the water-based overlaying material is Portland cement (column 2, line 14).

Claim 22:

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Schneller discloses a building product wherein the water-based overlaying material is a finishing plaster (stucco, column 1, line 13).

Claims 23 and 24:

While Schneller does not specify the use of cement between undersiding and the reinforcing layer or between the reinforcing layer and the finishing material, the application of cement would have been obvious to one of ordinary skill in the art at the time the invention was made for attaching the reinforcement to the proximate surfaces.

#### ***Allowable Subject Matter***

Claims 4, 6, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Prior Art***

US Patent 6,698,149 to Ruchgy discloses a composite building panel with a foam core, faces of non-cellulosic fiber mats and an exterior coating.

US Patent 5,647,180 to Billings et al. discloses a fire resistant building panel with fiberglass mats and a cementitious outer coating.

US Patent 5,531,051 to Chenier, Jr. et al. discloses a corner bead with gypsum panels, metal lath, and plaster coating.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naoko Slack whose current telephone number is 571-272-6848. The examiner can normally be reached on Mon-Fri (6:00 am-2:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Naoko Slack  
Primary Examiner  
Art Unit 3635

NS  
May 9, 2005